

AMENDED IN ASSEMBLY APRIL 28, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 796**

**Introduced by Assembly Member Bogh**

February 20, 2003

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An act to ~~amend Section 6309 of~~ *add Section 6434.5 to* the Labor Code, relating to occupational safety and health.

LEGISLATIVE COUNSEL'S DIGEST

AB 796, as amended, Bogh. Occupational safety and health: ~~violations fines.~~

*Existing law permits, under specified circumstances, educational entities and institutions to apply for a refund of any civil or administrative penalty imposed against them for a violation of certain laws and orders relating to safety in employment. If the educational entities or institutions do not apply for a refund, existing law requires that the funds from the civil and administrative penalties imposed against them be expended to fund grants to assist schools in establishing effective occupational injury and illness prevention programs upon appropriation by the Legislature.*

*This bill would establish a similar refund plan for civil and administrative penalties imposed against public police and fire departments and would require that, if a police or fire department does not apply for a refund, the unclaimed funds from the civil and administrative penalties be given to designated public entities to be used to fund grants for specific purposes, upon appropriation by the Legislature.*

~~Existing law requires the Division of Occupational Safety and Health of the Department of Industrial Relations to investigate specified complaints concerning unsafe employment or places of employment, with certain requirements.~~

~~This bill would make a technical, nonsubstantive change to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 6309 of the Labor Code is amended to~~  
2     ~~SECTION 1. Section 6434.5 is added to the Labor Code, to~~  
3     ~~read:~~

4     ~~6434.5. (a) Any civil or administrative penalty assessed~~  
5     ~~pursuant to this chapter against a public police or fire department~~  
6     ~~shall be deposited into the Workplace Health and Safety Revolving~~  
7     ~~Fund established pursuant to Section 78.~~

8     ~~(b) Any public police or fire department may apply for a refund~~  
9     ~~of its civil penalty, with interest, if all conditions previously cited~~  
10    ~~have been abated, the department has abated any other~~  
11    ~~outstanding citation, and the department has not been cited by the~~  
12    ~~division for a serious violation within two years of the date of the~~  
13    ~~original violation. Funds not applied for within two years and six~~  
14    ~~months of the time of the original violation shall be expended in~~  
15    ~~accordance with Section 78 as follows:~~

16    ~~(1) Funds received as a result of a civil or administrative~~  
17    ~~penalty imposed on a fire department shall be used to assist the~~  
18    ~~California Firefighter Joint Apprenticeship Program in~~  
19    ~~establishing effective occupational injury and illness prevention~~  
20    ~~programs.~~

21    ~~(2) Funds received as a result of a civil or administrative~~  
22    ~~penalty imposed on a police department shall be used to assist the~~  
23    ~~Office of Criminal Justice Planning in establishing effective~~  
24    ~~occupational injury and illness prevention programs.~~

25    ~~read:~~

26    ~~6309. If the division learns or has reason to believe that any~~  
27    ~~employment or place of employment is not safe or is injurious to~~  
28    ~~the welfare of an employee, it may, of its own motion, or upon~~  
29    ~~complaint, summarily investigate the same with or without notice~~

1 or hearings. However, if the division secures a complaint from an  
2 employee, the employee's representative, including, but not  
3 limited to, an attorney, health or safety professional, union  
4 representative, or representative of a government agency, or an  
5 employer of an employee directly involved in an unsafe place of  
6 employment, that his or her employment or place of employment  
7 is not safe, it shall, with or without notice or hearing, summarily  
8 investigate the same as soon as possible, but not later than three  
9 working days after receipt of a complaint charging a serious  
10 violation, and not later than 14 calendar days after receipt of a  
11 complaint charging a nonserious violation. The division shall  
12 attempt to determine the period of time in the future that the  
13 complainant believes the unsafe condition may continue to exist,  
14 and shall allocate inspection resources so as to respond first to  
15 those situations in which time is of the essence. For purposes of this  
16 section, a complaint is deemed to allege a serious violation if the  
17 division determines that the complaint charges that there is a  
18 substantial probability that death or serious physical harm could  
19 result from a condition which exists, or from one or more  
20 practices, means, methods, operations, or processes which have  
21 been adopted or are in use in a place of employment. When a  
22 complaint charging a serious violation is received from a state or  
23 local prosecutor, or a local law enforcement agency, the division  
24 shall summarily investigate the employment or place of  
25 employment within 24 hours of receipt of the complaint. All other  
26 complaints are deemed to allege nonserious violations. The  
27 division may enter and serve any necessary order relative thereto.  
28 The division is not required to respond to any complaint within this  
29 period where, from the facts stated in the complaint, it determines  
30 that the complaint is intended to willfully harass an employer or  
31 is without any reasonable basis.

32 The division shall keep complete and accurate records of any  
33 complaints, whether verbal or written, and shall inform the  
34 complainant, whenever his or her identity is known, of any action  
35 taken by the division in regard to the subject matter of the  
36 complaint, and the reasons for the action. The records of the  
37 division shall include the dates on which any action was taken on  
38 the complaint, or the reasons for not taking any action on the  
39 complaint. The division shall, pursuant to authorized regulations,  
40 conduct an informal review of any refusal by a representative of

1 ~~the division to issue a citation with respect to any alleged violation.~~  
2 ~~The division shall furnish the employee or the representative of~~  
3 ~~employees requesting the review a written statement of the reasons~~  
4 ~~for the division's final disposition of the case.~~

5 ~~The name of any person who submits to the division a complaint~~  
6 ~~regarding the unsafeness of an employment or place of~~  
7 ~~employment shall be kept confidential by the division, unless that~~  
8 ~~person requests otherwise.~~

9 ~~The requirements of this section do not relieve the division of~~  
10 ~~its requirement to inspect and assure that all places of employment~~  
11 ~~are safe and healthful for employees. The division shall maintain~~  
12 ~~the capability to receive and act upon complaints at all times.~~

